

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

ROBERT SPIEGEL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 16-12654-PBS
	)	
THE COMMONWEALTH OF	)	
MASSACHUSETTS, et al.,	)	
	)	
Defendants.	)	

**MEMORANDUM AND ORDER**

Saris, C.J.

For the reasons set forth below, the Court grants the plaintiff's motion for leave to proceed in forma pauperis, directs the plaintiff to show cause why this action should not be dismissed, and denies without prejudice the plaintiff's motion for the appointment of pro bono counsel.

**I. Background**

**A. Complaint**

Pro se litigant Robert Spiegel brings this action in which he complains that state court judges and employees violated his federal rights in the course of his divorce proceedings in the Norfolk Probate and Family Court ("Norfolk Court"). He names as defendants the Commonwealth of Massachusetts ("Commonwealth"); the Norfolk Court; four justices of the Commonwealth's Probate and Family Court--Chief Justice Angela Ordonez, Associate Justice George Phelan, Associate Justice Susan Jacobs, and Associate Justice James Menno; the Honorable Paula M. Carey, current Chief Justice of the Commonwealth's Trial Court and former Chief

Justice of the Probate and Family Court; Patrick McDermott, Register of the Norfolk Court; Clare Gamberoni, Assistant Judicial Case Manager for the Norfolk Court; and, and Kim Wright, Esq., Senior Assistant for Judicial Policy.

Spiegel characterizes the defendants' conduct as "a clear and convincing conspiracy to delay my appeal in a colluded effort of Fraud Upon the Court." Compl. at 4. He maintains that, as a "DIRECT RESULT OF Fraud Upon the Court, [he] suffered permanent injury and bodily harm [and] Diminished Physical and Emotional capacities as a result of the manufactured evidence, missing evidence, suppressed evidence, lack of respect for the Constitution and the Judicial Cannons of Ethics." Id. Spiegel brings this action under 42 U.S.C. § 1983, claiming that the defendants denied him his rights to due process, to "protect [him]self from emotional or Bodily Harm," and to a "fair and impartial disposition of [his] case." Id. at 3.

While Spiegel broadly alleges that the defendants are engaged in an ongoing fraudulent conspiracy, he describes only one particular occurrence of misconduct. According to Spiegel, on September 14, 2012, he suffered a violent seizure upon learning that Judge Ordonez was going to deny him access to certain transcripts, ignoring an order of the Supreme Judicial Court and her own previous order.<sup>1</sup> Because of this seizure,

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<sup>1</sup>For purposes of this memorandum and order, the Court recites the allegations of the complaint without calling into question their veracity. To the extent necessary, when quoting passages of the complaint, the Court will correct small spelling errors without identifying the change.

which was triggered by the stress caused by Judge Ordonez's ruling, Spiegel suffered a number of broken bones and had to undergo surgeries and physical treatment for years thereafter. He is now disabled and has been formally diagnosed with Posttraumatic Stress Disorder "as a result of the Trauma his body suffered because it couldn't handle the stress being brought on by the Malicious and fraudulent acts of the Defendants being denied protection of the Court resulting in my inability to care for myself, make decisions in my best interest." Compl. at 5. He further reports "the feeling of hopelessness as [he] watched the court steal asset after asset and ignore civil rules of evidence and procedure." Id.

In regards to relief, Spiegel asks for "disbarment of those individuals who are found guilty to have perpetrated [sic] the fraud" and a "voided Judgement." Compl. at 5. He will also seek monetary relief for past and future lost income, for the reinstatement of "policies that lapsed as a result of the Courts [sic] delays" and "[p]ayments of all fees, fines, penalties accrued [sic]." Id. Spiegel further states that he will "seek[] punitive damages based on the scope of the Fraud and the extent to which the court has disabled Plaintiff physically, financially and emotionally." Id.

**B. Motion for the Appointment of Counsel**

Spiegel has also filed a motion for the appointment of pro bono counsel (Dkt. # 5). He represents therein that he is totally disabled because of the conduct of the defendants and that his health is rapidly declining. He asks for an opportunity

to share with the Court "what the SJC shared with [him] and why assistance of Counsel could prevent Plaintiff any further bodily or emotional harm from being inflicted on him at this time." Mot. at 1. He continues, "Time is of the essence physically as the added stress from the continued colluded efforts of Judge Ordonez have increased my seizure activity." Id.

Spiegel provides in the motion for counsel additional factual allegations of misconduct by the defendants. He represents that then-Chief Justice Carey and her assistant Kim Wright instructed the Chief Judicial Case Manager to require Spiegel to submit the same motions four times. He also states that other judges directly participated in this plot. Spiegel alleges that Judge Ordonez enlisted Judge Phelan, Judge Menno, and Judge Jacobs to assist in delaying Spiegel's access to transcripts and preventing his appeal from moving forward. Register McDermott and Assistant Judicial Case Manager Gamberoni allegedly ensured that his case file was lost, "with no accountability," four times. Mot. at 2. Spiegel further maintains that recordings were turned off more than 300 times during trial, exhibits were somehow lost, key testimony disappeared, he was prevented from entering key evidence, he was wrongfully found in contempt, and that the court "stole thousands" from him. Id. He purports to have "hundreds of pages of email communications with Court and other related Commonwealth agencies regarding the allegations." Mot. at 2.

Spiegel states that he has unsuccessfully sought recourse with the Board of Bar Overseers and the Commission on Judicial

Misconduct. He does credit the Supreme Judicial Court with "uphold[ing] [his] rights to due process, free from corruption and obstruction of Justice and Discrimination," id. at 1, and for "referr[ing] [him] to the Federal Court, citing both Subject Matter and Personal Jurisdiction," id. at 2. He seeks appointment of counsel to "perfect [his] complaint, explain what relief [he is] entitled to and for how long, and to "ensur[e] that those parties named are all liable and do not have Judicial Immunity." Id. at 2.

### **C. Other Docket Activity**

Spiegel filed in person his complaint, motion for appointment of counsel, and motion to proceed in forma pauperis on December 30, 2016. At that time, the Clerk issued summonses as to all the defendants. The filing fee has not yet been resolved.

## **II. Discussion**

### **A. Motion for Leave to Proceed In Forma Pauperis**

Based on the plaintiff's financial disclosures, the Court concludes that he has adequately shown that he is without income or assets to pay the fee. Accordingly, the motion for leave to proceed in forma pauperis is GRANTED.

### **B. Preliminary Review of the Complaint**

#### **1. Court's Authority to Screen the Complaint**

Because the plaintiff is proceeding in forma pauperis, his complaint is subject to screening under 28 U.S.C. § 1915(e)(2). This statute authorizes federal courts to dismiss actions in which a plaintiff seeks to proceed without prepayment of fees if

the action is malicious, frivolous, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. See 28 U.S.C. § 1915(e)(2)(B). This determination can be made "at any time." 28 U.S.C. § 1915(e)(2). Further, a court has an obligation to inquire sua sponte into its own subject matter jurisdiction, see McCulloch v. Velez, 364 F.3d 1, 5 (1st Cir. 2004), and "[i]f the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action," Fed. R. Civ. P. 12(h)(3). In conducting this review, the Court liberally construes the plaintiff's complaint because he is proceeding pro se. See Haines v. Kerner, 404 U.S. 519, 520-21 (1972).

## **2. Eleventh Amendment Immunity**

All claims against the Commonwealth of Massachusetts and the Norfolk Court are subject to dismissal because these defendants enjoy immunity from suit in this Court in regards to the plaintiff's claims. The Eleventh Amendment of the United States Constitution generally is recognized as a bar to suits in federal courts against a State, its departments and its agencies, unless the State has consented to suit or Congress has overridden the State's immunity. See Regents of the Univ. of Cal. v. Doe, 519 U.S. 425, 429 (1997); Kentucky v. Graham, 473 U.S. 159, 167 n. 14 (1985); Alabama v. Pugh, 438 U.S. 781, 782 (1978) (per curiam); Hudson Sav. Bank v. Austin, 479 F.3d 102, 105-06 (1st Cir. 2007). Here, the Court cannot discern any claim for relief against the Commonwealth, or the Norfolk Court (which is an arm of the state), for which the Commonwealth has waived its immunity or

Congress has overridden it. The Supreme Court has ruled that Congress, in enacting 42 U.S.C. § 1983, did not abrogate a state's Eleventh Amendment immunity. See Will v. Michigan Dep't of State Police, 491 U.S. 58, 71 (1989) (a state is not a "person" for purposes of 42 U.S.C. § 1983); see also Whalen v. Massachusetts Trial Ct., 397 F.3d 19, 28-30 (1st Cir. 2005) (state trial court entitled to Eleventh Amendment immunity).

### **3. Judicial Immunity**

All claims for damages against the individual defendants appear to be barred by the doctrine of judicial immunity. It is black-letter law that judges are immune "from liability for damages for acts committed within their judicial jurisdiction . . . even when the judge is accused of acting maliciously and corruptly." Pierson v. Ray, 386 U.S. 547, 554 (1967). Although "unfairness and injustice to a litigant may result on occasion," when this doctrine is applied, Mireles v. Waco, 502 U.S. 9, 10 (1991) (per curiam), "it is a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself," id. (quoting Bradley v. Fisher, 80 U.S. 335, 347 (13 Wall.) (1872)).

The doctrine of judicial immunity is only overcome where the alleged misconduct was not taken in the judge's judicial capacity or where it was taken in complete absence of all jurisdiction. See Mireles, 502 U.S. at 11-12. These exceptions are extremely narrow. An act by a judge is "judicial" as long as it is "a

function normally performed by a judge" and the parties were "deal[ing] with the judge in his judicial capacity." Id. at 12. For purposes of applying judicial immunity the scope of a judge's jurisdiction is to be "construed broadly," and "the asserted immunity will only be overcome when the 'judge clearly lacks jurisdiction over the subject matter.'" Ceparano v. Southampton Justice Ct., 404 Fed. Appx. 537, 539 (2d Cir. 2011) (quoting Maestri v. Jutkofsky, 860 F.2d 50, 52, 53 (2d Cir. 1988)). "[A]bsolute judicial immunity is ineffaceable even in the presence of "grave procedural errors." Nystedt v. Nigro, 700 F.3d 25, 32 (1st Cir. 2012) (quoting Stump v. Sparkman, 435 U.S. 349, 359 (1978)).

For example, in Mireles, a public defender brought suit in federal court against a state judge, claiming that the judge violated his Fourth Amendment rights by directing police officers to bring him to the judge's courtroom, where he was scheduled to appear. The attorney represented that the officers followed those instructions and used unnecessary violence to remove him from another courtroom where he was waiting to appear to the courtroom of the judge who had dispatched the officers. See id. at 10. The district court granted the judge's motion to dismiss on the ground of judicial immunity. The Ninth Circuit reversed, holding that the alleged actions were not taken in the judge's judicial capacity if he requested and authorized the use of excessive force. See id. at 11 (citing Waco v. Baltad, 934 F.2d 214, 216 (9th Cir. 1991)).

The Supreme Court summarily reversed, ruling that the Ninth



Circuit had defined a "judicial" act too narrowly. The Court explained that a function normally performed by a judge does not become "nonjudicial" simply because the particular act was a mistake or in excess of his authority. See id. at 13. "The relevant inquiry is the 'nature' and 'function of the act, not the 'act itself.'" Id. (quoting Stump v. Sparkman, 435 U.S. 349, 362 (1978)). In this case, the relevant question was whether "directing police officers to bring counsel in a pending case before the court" was a function normally performed by a judge, not whether directing police officers to use excessive force to bring counsel to him was a judicial function. Id. Because "[a] judge's direction to court officers to bring a person who is in the courthouse before him is a function normally performed by a judge," and the plaintiff attorney was called in for purposes of a pending case, the judge's alleged misconduct was taken in his judicial capacity. Id. at 12. The Supreme Court also held that the judge's actions were not taken in complete absence of all jurisdiction; rather it was "taken in the very aid of the judge's jurisdiction over a matter before him." Id. at 13.

Similarly, Spiegel does not make any allegations--in the complaint or in the motion for counsel--that would support a reasonable conclusion that their misconduct would not be shielded by judicial immunity. His complaint concerns judges and their staff misusing judicial power by making rulings adverse to the plaintiff and administering the case in a manner that the federally-protected rights of the plaintiff. He does not suggest that the alleged misconduct of the state judges was not judicial

or that it was taken in the clear absence of any jurisdiction over the matter at issue.

#### **4. Injunctive Relief**

The doctrine of judicial immunity does not apply to prospective injunctive relief, but the other legal principles do preclude this Court from interfering in an ongoing state court proceeding.

In an action under § 1983, the Court cannot award injunctive relief "in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity," unless "a declaratory decree was violated or declaratory relief was unavailable." 42 U.S.C. § 1983. Because there has been no prior declaratory decree in this case, Spiegel is not entitled to injunctive relief on his § 1983 claims.

Further, to the extent that § 1983 does not foreclose injunctive relief, the Court will abstain from exercising jurisdiction over this action on the ground that it would interfere with ongoing proceedings in the Norfolk Court. See Maymo-Melendez v. Alvarez-Ramirez, 364 F.3d 27, 31 (1st Cir. 2004) ("Younger [abstention] is a court-made rule of abstention built around the principle that, with limited exceptions, federal courts should refrain from issuing injunctions that interfere with ongoing state-court litigation . . . ." (citing Younger v. Harris, 401 U.S. 37, 43-45, 53-54 (1971))).

#### **C. Motion for Appointment of Counsel**

Although the Court "may request an attorney to represent any person unable to afford counsel," 28 U.S.C. §1915(e)(1), a civil

plaintiff lacks a constitutional right to free counsel, see DesRosiers v. Moran, 949 F.2d 15, 23 (1st Cir. 1991). The Court does not have the funds to pay attorneys to represent plaintiffs in civil cases, and it is very difficult for the Court to find attorneys who will accept appointment as pro bono counsel. To qualify for this scarce resource, a party must be indigent and exceptional circumstances must exist such that the denial of counsel will result in fundamental unfairness impinging on the party's due process rights. See DesRosiers, 949 F.2d at 23. To determine whether there are exceptional circumstances sufficient to warrant the appointment of counsel, a court must examine the total situation, focusing on the merits of the case, the complexity of the legal issues, and the litigant's ability to represent himself. See id. at 24.

For purposes of this memorandum and order only, the Court credits the plaintiff's representations that he is unable to represent himself and assumes that he has sufficiently pled that the defendants have violated his federal rights in the course of his divorce proceedings in the Norfolk Court. However, that the defendants violated his rights does not necessarily mean that he can state a claim for relief in this Court. As explained above, the Court cannot identify any claim that would not be precluded by the doctrines of judicial immunity, quasi-judicial immunity or the state's immunity under the Eleventh Amendment. In the absence of any indication that this case presents a scenario in which a litigant could state a claim upon which relief could be granted, appointing pro bono counsel would serve no purpose and

would be an inappropriate use of pro bono resources.

### **III. Conclusion**

1. The motion for leave to proceed in forma pauperis is GRANTED.

2. The motion for appointment of counsel is DENIED WITHOUT PREJUDICE.

3. The Court directs the plaintiff to show good cause in writing, within thirty-five days, why this action should not be dismissed for the reasons stated above. Failure to comply with this directive may result in dismissal of the action.

4. The summonses are REVOKED. Unless and until the Court orders that summonses reissue, Spiegel shall not serve the summonses, attempt to procure a waiver of service of summonses, or otherwise represent to the defendants that they are obligated to respond to the complaint.

5. The defendants are not obligated to respond to the complaint until further order of the Court.

SO ORDERED.

1/11/2017  
DATE

/s/ Patti B. Saris  
PATTI B. SARIS  
CHIEF, U.S. DISTRICT JUDGE